

FTB Notice 91-5
410:BRL:CN-91-1035

Re: Increased Interest on Large Corporate Underpayments

EFFECTIVE JANUARY 1, 1992, CORPORATIONS MAY BE SUBJECT TO AN ADDITIONAL 2% INTEREST RATE ON UNPAID BALANCES OWED TO THE FRANCHISE TAX BOARD.

California Conformity to IRC §6621(c)

Corporations must pay interest on balances due to the Franchise Tax Board. The rate of interest is set by Revenue and Taxation Code Section 25901b. That section in turn refers to Revenue and Taxation Code Section 19269.

Section 42 of SB 169 (Stats. 1991, Ch. 117) amended §19269, adding a new subdivision (c). California law now generally incorporates Internal Revenue Code §6621(c) in computing interest for periods of underpayment after December 31, 1991. These federal provisions require a 2% increase to the current deficiency interest rate for C corporations in some cases.

The increased interest applies to "large corporate underpayments" by C corporations for periods after an "applicable date". Because California law in this area now incorporates federal law, federal regulations and rulings will apply. See 18 Cal. Code Regs. §26422, FTB Notice 89-277.

Applicable Date

Under federal law, as modified for California purposes, the "applicable date" is the 30th day after a notice of proposed assessment or a notice and demand is sent to the corporation. See Revenue and Taxation Code §19269(c)(1).

A notice shall be disregarded for purposes of determining the applicable date if the corporation makes a payment equal to the amount shown as due in the notice within 30 days of the date the notice was sent. See Treas. Reg. §301.6621-3T(c)(4)(i).

This means that where a taxpayer does not pay the amount shown on a notice of proposed assessment but protests the proposed assessment without payment pursuant to Revenue and Taxation Code §25664, an applicable date will always be established.

Large Corporate Underpayment

Once a corporation meets a large corporate underpayment cumulative threshold amount of \$100,000 in unpaid tax (see Treas. Reg. §301.6621-3T(d) Ex. 2 for an explanation of "cumulative threshold amount"), all underpayments for that year are subject to the additional 2% interest from the earliest "applicable date" occurring for the year, or if that applicable

date occurred before January 1, 1992, from January 1, 1992. See Revenue and Taxation Code §19269(c)(2).

In computing the threshold amount, regular tax and alternative minimum tax are included, but not penalties or interest. See Treas. Reg. §301.6621-3T(c)(2)(ii). Where affiliated corporations included in a single combined report have elected to file a single return, the \$100,000 threshold and the applicable date will be determined with reference to the combined underpayment of all corporations included in that return for that income year.

Special Transition Rule for 1992

Notices sent prior to January 1, 1992, will be disregarded in determining the applicable date for each income year that the corporation pays all balances due by January 31, 1992. See Treas. Reg. §301.6621-3T(c)(4)(ii).

DRAFTING INFORMATION

The principal author of this notice is Bruce R. Langston, Senior Staff Counsel, Franchise Tax Board Legal Division. For further information regarding this notice, contact Mr. Langston at P. O. Box 1468, Sacramento CA 95812-1468.